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7 CFR Ch. II (1–1–97 Edition)

State	Total apportionment	State agency	Withheld for private schools
Connecticut	1,778,232	1,778,232	.....
Delaware	285,824	285,824	.....
District of Columbia	146,995	146,995	.....
Florida	1,379,099	1,379,099	.....
Georgia	2,599,975	2,546,893	53,082
Hawaii	139,849	116,371	23,478
Idaho	118,413	118,413	.....
Illinois	6,758,710	6,758,710	.....
Indiana	2,723,491	2,723,491	.....
Iowa	1,336,226	1,336,226	.....
Kansas	995,279	995,279	.....
Kentucky	2,390,711	2,390,711	.....
Louisiana	835,014	835,014	.....
Maine	750,287	670,665	79,622
Maryland	2,525,456	2,525,456	.....
Massachusetts	3,561,567	3,561,567	.....
Michigan	4,944,750	4,944,750	.....
Minnesota	2,400,919	2,400,919	.....
Mississippi	996,300	996,300	.....
Missouri	2,017,099	1,935,435	81,664
Montana	204,160	169,453	34,707
Nebraska	\$616,562	\$526,732	\$89,830
Nevada	110,246	90,246	20,000
New Hampshire	644,124	644,124	.....
New Jersey	4,006,636	4,006,636	.....
New Mexico	741,100	327,676	413,424
New York	8,967,718	8,967,718	.....
North Carolina	4,839,608	4,839,608	.....
North Dakota	289,907	258,262	31,645
Ohio	7,795,841	7,121,093	674,748
Oklahoma	955,468	955,468	.....
Oregon	835,013	805,410	29,603
Pennsylvania	3,551,359	3,551,359	.....
Rhode Island	489,983	489,983	.....
South Carolina	1,131,046	1,047,340	83,706
South Dakota	308,281	308,281	.....
Tennessee	3,131,811	3,052,189	79,622
Texas	4,478,245	4,278,168	200,077
Utah	198,035	198,035	.....
Vermont	407,299	407,299	.....
Virginia	2,286,589	2,141,636	144,953
Washington	1,471,992	1,202,501	269,491
West Virginia	483,859	483,859	.....
Wisconsin	3,561,567	3,561,567	.....
Wyoming	59,206	59,206	.....
Total	102,079,890	99,607,930	2,471,960

NOTE: The remainder of the \$144,000,000 appropriated is distributed as follows: \$889,000 for administrative expenses; \$1,031,110 in reserve to meet unforeseen contingencies; and \$40,000,000 proposed for rescission.

(Secs. 2, 3, 6 and 8–16, 80 Stat. 885–890; 42 U.S.C. 1771, 1772, 1775, 1777–1785)

[41 FR 7752, Feb. 20, 1976; 41 FR 9533, Mar. 5, 1976]

PART 220—SCHOOL BREAKFAST PROGRAM

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AUTHORITY: 42 U.S.C. 1773, 1779, unless otherwise noted.

§ 220.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 4 of the Child Nutrition Act of 1966, as amended, which authorizes payments to the States to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools.

[Amdt. 25, 41 FR 34758, Aug. 17, 1976]

§ 220.2 Definitions.

For the purpose of this part the term: (a) *Act* means the Child Nutrition Act of 1966, as amended.

(b) *Breakfast* means a meal which meets the nutritional requirements set out in § 220.8 or § 220.8a, whichever is applicable, and which is served to a child in the morning hours. The meal shall be served at or close to the beginning of the child's day at school.

(c) *Child* means: (1) A student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (1) and (2) of the definition

of "School", including students who are mentally or physically handicapped as defined by the State and who are participating in a school program established for the mentally or physically handicapped; or (2) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraphs (3) and (4) of the definition of "School".

(c-1) *Competitive foods* means any foods sold in competition with the School Breakfast Program to children in food service areas during the breakfast period.

(d) *CND* means the Child Nutrition Division of the Food and Consumer Service of the Department.

(e) *Department* means the U.S. Department of Agriculture.

(f) *Distributing agency* means a State, Federal, or private agency which enters into an agreement with the Department for the distribution of commodities pursuant to part 250 of this chapter.

(g) *Fiscal year* means the period of 15 calendar months beginning July 1, 1976, and ending September 30, 1977; and the period of 12 calendar months beginning October 1, 1977, and each October 1 of any calendar year thereafter and ending September 30 of the following calendar year.

(h) *FCS* means the Food and Consumer Service of the Department.

(i) *FCSRO* means the appropriate Food and Consumer Service Regional Office of the Food and Consumer Service of the Department.

(i-1) *Foods of minimal nutritional value* means: (1) In the case of artificially sweetened foods, a food which provides less than five percent of the Reference Daily Intake (RDI) for each of eight specified nutrients per serving; (2) in the case of all other foods, a food that provides less than five percent of the RDI for each of eight specified nutrients per 100 calories and less than five percent of the RDI for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are: Protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium and iron. Categories of foods of minimal nutritional value are listed in appendix B of this part.

(j) *Free breakfast* means a breakfast for which neither the child nor any member of his family pays or is required to work in the school or in the school's food service.

(k) *Infant cereal* means any iron-fortified dry cereal especially formulated and generally recognized as cereal for infants that is routinely mixed with formula or milk prior to consumption.

(l) *Infant formula* means any iron-fortified infant formula intended for dietary use solely as a food for normal healthy infants excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(m) *Menu item* means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in §220.8, except for those foods that are considered as foods of minimal nutritional value as provided for in §220.2(i-1) which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable breakfast, a minimum of three menu items must be offered, one of which shall be fluid milk served as a beverage or on cereal or both; under offer versus serve, a student may decline only one menu item.

(n) *Milk* means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (0 to 1 year of age) milk means unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meet such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with

State and local standards for such milk.

(o) *National School Lunch Program* means the Program authorized by the National School Lunch Act.

(o-1) *Net cash resources* means all monies as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a School Food Authority's nonprofit school food service at any given time, less cash payable. Such monies may include but are not limited to, cash on hand, cash receivable, earnings or investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

(o-2) *Nonprofit school food service* means all food service operations conducted by the School Food Authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food service.

(p) *Nonprofit* when applied to schools or institutions eligible for the Program means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or in the Commonwealth of Puerto Rico, certified by the Governor.

(p-1) *Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning* mean ways to develop menus based on the analysis of nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met. Such analysis is based on averages weighted in accordance with the criteria in §220.8(e)(5). Such analysis is normally done by a school or a school food authority. However, for the purposes of Assisted Nutrient Standard Menu Planning, menu planning and analysis are completed by other entities and shall incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority.

(q) *OA* means the Office of Audit of the Department.

(q-1) *OI* means the Office of Investigation of the Department.

(q-2) *OIG* means the Office of the Inspector General of the Department.

(r) *Program* means the School Breakfast Program.

(s) *Reduced price breakfast* means a breakfast which meets all of the following criteria: (1) The price shall be less than the full price of the breakfast, (2) the price shall be 30 cents or lower, and (3) neither the child nor any member of his family shall be required to supply an equivalent value in work for the school or the school's food service.

(t) *Reimbursement* means financial assistance paid or payable to participating schools for breakfasts meeting the requirements of §220.8 or §220.8, whichever is applicable, served to eligible children at rates assigned by the State agency, or FCSRO where applicable. The term "reimbursement" also includes financial assistance made available through advances to School Food Authorities.

(t-1) *Revenue* when applied to nonprofit school food service means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

(u) *School* means: (1) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; (2) any public or nonprofit private classes of preprimary grade when they are conducted in the aforementioned schools; (3) any public or nonprofit private residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor, and private foster homes. The term "residential child care institutions" includes, but is not limited to: Homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes;

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halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more; or (4) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

(v) *School Breakfast Program* means the program authorized by section 4 of the Child Nutrition Act of 1966.

(v-1) *School in severe need* means a school determined to be eligible for rates of reimbursement in excess of the prescribed National Average Payment Factors, based upon the criteria set forth in § 220.9(e).

(w) *School Food Authority* means the governing body which is responsible for the administration of one or more schools and which has legal authority to operate a breakfast program therein.

(w-1) *School week* means the period of time used to determine compliance with the nutrition standards and the appropriate calorie and nutrient levels in § 220.8. Further, if applicable, school week is the basis for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for breakfasts as provided in § 220.8(e) and § 220.8(f). The period shall be a normal school week of five consecutive days; however, to accommodate shortened weeks resulting from holidays and other scheduling needs, the period shall be a minimum of three consecutive days and a maximum of seven consecutive days. Weeks in which school breakfasts are offered less than three times shall be combined with either the previous or the coming week.

(x) *Secretary* means the Secretary of Agriculture.

(x-1) *7 CFR part 3015* means the Uniform Federal Assistance Regulations published by the Department to implement Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122, and A-128; the Single Audit Act of

1984 (31 U.S.C. 7501 *et seq.*); and Executive Order 12372.

NOTE: OMB Circulars, referred to in this definition, are available from the EOP Publications, New Executive Office Building, 726 Jackson Place NW., Room 2200, Washington, DC 20503.

(y) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(z) *State agency* means: (1) The State educational agency or (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools as defined in § 220.2(u)(3) of this part.

(aa) *State educational agency* means, as the State legislature may determine: (1) The chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State department of education.

(Sec. 6, Pub. L. 95-627, 92 Stat. 3620 (42 U.S.C. 1760); sec. 205, Pub. L. 96-499, The Omnibus Reconciliation Act of 1980, 94 Stat. 2599; secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1759(a), 1773, 1758; secs. 807 and 808, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1772, 1784, 1760; sec. 819, Pub. L. 97-35; 95 Stat. 533 (42 U.S.C. 1759a, 1773 and 1757))

[Amdt. 25, 41 FR 34758, Aug. 17, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 220.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 220.3 Administration.

(a) Within the Department, FCS shall act on behalf of the Department in the administration of the Program covered by this part. Within FCS, CND shall be responsible for administration of the Program.

(b) Within the States, responsibility for the administration of the Program in schools as defined in § 220.2(u)(1), (u)(2) and (u)(4) shall be in the State educational agency, except that FCSRO shall administer the Program with respect to nonprofit private schools as defined in § 220.2(u)(1) of any State wherein the State educational